

UTILITY CONSUMER PARTICIPATION BOARD

August 27, 2007

MINUTES

A meeting of the Utility Consumer Participation Board was held Monday, August 27, 2007 in the Ottawa Building, 4th Floor Training Room, Lansing, Michigan.

I. Call to Order

Chairman Harry Trebing called the meeting to order at 10:10 a.m. Board members present: Harry Trebing, Ron Rose, Marc Shulman and Alexander Isaac. Members absent: Sister Monica Kostielney. Other appearances: Michelle Wilsey, LeAnn Droste, Donald Keskey, David Shaltz, John Liskey, Michael Moody, Robert Nelson, Bill Knox, Geoff Crandall, Howard Perry, Mike Shalley.

II. Agenda

Rose moved, second by Isaac and motion carried to approve the agenda with the addition of MEC/PIRGIM UCRF Grant 07-02 amendment request under new business.

III. Minutes

Shulman moved, second by Rose and motion carried to approve the minutes of June 4, 2007 as printed.

IV. Correspondences

The following correspondences were received and placed on file:

1. MEC/PIRGIM Case List dated 8/27/2007 (Keskey).
2. RRC UCRF Case status report dated August 22, 2007. (Shaltz).
3. Memo Re: Status Report Concerning CEC's 2007 Plan Case, U-15001 (Keskey)
4. Major action summary of June 4, 2007 UCPB Board meeting. (Wilsey).
5. Briefing Report for 2008 Grant Application Review (Wilsey).
6. 2008 Grant Request Summary Budget Breakdowns (Keskey).
7. Memo Re: Request for funding in current and upcoming grant budgets for DECo base rate case U-15244, CEC's base rate case U-15245; CEC's "Balanced Energy Initiative" in U-15290; MCV's PPA application in U-15320, and subsequent nuclear decommissioning cases dealing with reconciling Big Rock and Palisades decommissioning funds or SNF site costs, and generic or collaborative dockets involving energy efficiency and low-income customer programs. (Keskey)
8. AARP Michigan Grant Application for the 2007-2008 UCRF (Knox)
9. RRC Grant Application for the 2007-2008 UCRF
10. MEC/PIRGIM Grant Application for the 2007-2008 UCRF
11. MCAAA Grant Application for the 2007-2008 UCRF.
12. Copy of contract and purchase order effective August 1, 2006-September 30, 2007 for UCPB Special Assistant.
13. UCRF Financial Report dated as of 8/22/07. (Terri Eklund, DLEG).
14. Memo Re: Auditor General's Performance Audit of the Department of Labor and Economic Growth's Utility Consumer Participation Board (#641-0425-06L) for the period October 1, 2002 through July 28, 2006.

V. Reports

A. Grantees

Chairman Trebing noted that written reports were received from the current grantees. He deferred comments on current grants to discussion during review of new grant proposals.

B. Attorney General – No report.

C. Financial – Financial report received. No additional comments.

D. Administrative – Droste noted that the Legislature is still acting on the fiscal year '08 budget and that all grants that would be awarded today would be contingent upon the passage of any appropriations by the legislature.

VI. New Business

A. Election of Officers

Trebing called for nomination and election of new officers. He commented on the issues and challenges of the past year and emphasized the need for the chairman to be available the entire year. While he will continue to serve on the board, he is out of the state for several months each year and will not be able to continue as chair. Trebing surveyed the members in regard to their interest and availability to serve as chairperson. Messrs. Rose and Shulman declined. Kostielney was recommended but she was not in attendance. Trebing noted that she is very involved in several boards and the demands on her schedule are immense. Mr. Isaac agreed to serve as chair for one year. Shulman moved, second by Rose and motion carried to elect Mr. Isaac as chair effective the next meeting for one year. Rose moved, second by Trebing and motion carried to elect Shulman as vice chair effective the next meeting for one year.

B. 2008 UCRF Grant Proposals

Wilsey recommended discussion of the RRC proposal followed by the AARP, MEC/PIRGIM and MCAAA. Trebing agreed to take up the RRC proposal and invited Mr. Shaltz to provide an overview of the grant proposal. Mr. Shaltz presented the RRC proposal to continue involvement in the gas cost recovery and reconciliation proceedings of the four largest gas companies in Michigan. He explained that these would involve eight cases – four GCR plans and four reconciliation proceedings. He highlighted issues that they felt would be important in each of the cases the objectives of their intervention. He further explained personnel, budget and highlighted the proposed hourly rate increase from \$175 per hour to \$180 per hour. He noted that these are all clearly Act 304 cases and that they had a good track record of getting positive results for GCR customers. He also explained that, while they do not seek additional funding, they monitor smaller company dockets for issues of significance or impact to GCR customers. The GCR plan cases begin at the end of December and the reconciliation cases start in June. The proposal is based on their best projections. However, if significant issues arise, they will request a grant amendment to their proposal. Trebing asked Shaltz to explain what they have found in the past related the list of issues on p.7-8, such as use of storage capacity, pipeline capacity, etc., that would be relevant today. He noted concerns related to findings of the Midwest Attorney General's report and the Commodity Future Trading Commission, which found that some companies in their trading process have falsified the price and terms under which they were trading. Is fraud of this nature affecting Michigan consumers? Use of storage capacity has the potential for abuse, so does pipeline release. Explain what you have found, why it is relevant, and what you propose to look at for this year. Shaltz commented that Michigan has extensive storage capacity. Given the interest in marketing that storage, their role has been to ensure that as much of the storage capacity as possible can be used for GCR customers, if it reduces the cost of gas. There is tension between the utility's desire to maximize profits for its shareholders and its duty to minimize costs to their GCR customers. We examine the numbers and advocate for appropriate levels of storage capacity for GCR customers. Trebing asked if they had been successful in the past? Shaltz responded that they entered a settlement agreement with MichCon (not approved by the MPSC yet) that reserves the level of storage for GCR customers over the next three years at a higher level than what was proposed by the company. In regard to capacity release, we look at ways the company can reconfigure their arrangements with their suppliers or sell excess capacity for credit back to GCR customers. This is an issue that they have negotiated well and utilities do a good job, but they find lapses where opportunities to make that credit available to customers has been overlooked by the utilities. Trebing asked about hedging versus contract. Shaltz noted that RRC entered into some guidelines with Consumers Energy Company about how their hedging program would work. SEMCO and MGU want to get into hedging in the future, so it is an issue they have to watch very carefully. It is important to assure

the risk of hedging is not shifted to GCR customers unnecessarily. Trebing asked if there was any evidence of collusion on the spot market? Shaltz noted that in Michigan the amount of gas purchased on the spot market is limited. Trebing commented on the decoupling trend in electricity and gas. He asked if there was any evidence that they would need to look at decoupling in natural gas in the coming year? Shaltz noted that the Attorney General stopped SEMCO and Consumers Energy from implementing decoupling. He noted that MichCon and likely all utilities would pursue decoupling in their next general rate cases. Trebing asked if it was an issue for this coming year. Shaltz responded that it was not an issue for this coming year but he expected in the next three to five years it would be important. Shulman noted that the proposed interventions were all Act 304 specific requests. Shaltz responded affirmatively.

Shulman asked the Attorney General staff representative if they would be intervening in these cases as well. Moody responded they work very closely with RRC counsel on all of these cases. They intervene on some of the same cases but their experts focus on different issues or present different testimony. This has been very effective in achieving PFDs. Wilsey asked if they had any concerns with regard to the specific proposals presented by RRC. Mr. Moody responded no.

Rose noted that he had several comments. First, he noted for the record that there were no representatives from any utilities on this most critical day to assist in review and decision-making regarding the grant proposals. He requested any utility representative to please identify themselves if present. Nobody so indicated. He stated that the Auditor General's report had a chilling effect on him. It drove home the fact that he and the other board members had all of the responsibility and literally none of the administrative or financial tools to live up to the high standards that they were insisting upon. If he is asked to vote and protect dollars, he wants more than a general discussion. He will not vote today on any of these agreements. He has no information from the Department (DLEG) with regard to whether these grants are administratively and fiscally appropriate and sound. I cannot make judgment unless someone has crunched the numbers for me. There are a number of grants already made and many new grants being sought. There are a number of experts. In regard to the expert, Mr. Hollowa, in the RRC application - how many other grants or contracts is he working on, what is his rate of pay, and how many current grants is he working on right now? If it is over 2,080 hours, that is a great load and you cannot expect to overload someone and get a competent product. I do not want to make a decision and have the Auditor General report back that the expert has 3,000 hours of work that he is under contract to do in this amount of time. Many experts participate in several of the contracts. I do not have complete information and the resources to calculate such numbers. That is why I will not vote today. Perhaps we should send a letter to the Auditor General asking them to provide us with the resources, recommendations for resources, as to who can review these and all active grant projects to determine how many hours per year, per expert, per attorney, etc. If I am going to be held accountable because I didn't know this information, then I want a letter indicating that we asked for this help. I feel very strongly and passionately about the position that I have been put in as a non-compensated board member. I am a little incensed when I am asked to take that amount of responsibility and then have somebody come back and say, "you have failed the taxpayers or the ratepayers or the utilities." Everyone is entitled to a fair shake, as we board members are. Now, we are again in the position of granting over \$600,000 in grants. I am not concerned if it lapses. Everyone is involved in meaningful cases. I believe you were victims when the report was issued. As to the Attorney General, they commented in regard to our duty to coordinate based on review of some old files. Our contract employee, contracted at \$55 per hour for a maximum \$10,000, is our eyes and ears to deal with \$600,000 of grants today and millions outstanding. I throw this open to suggestions and recommendations. There is a disparity of fees between Mr. Keskey and Mr. Shaltz, which I do not support. I do not speak for the board, only myself.

Shulman noted that grant requests in the past have been made as a lump sum. They have not been broken down in terms of appeals, Act 304 specific cases, other cases with 304 applicability. Is there a mechanism that could be used to break out cases that are requested for funding as opposed to a lump sum? Shaltz commented that in the RRC grant proposal each individual case is broken out per the directive of the board. Keskey noted that the same approach was used for the MEC/PIRGIM and MCAAA proposals, Nelson noted this was the case for AARP. Shulman asked to vote on them separately

rather than in total. Trebing responded, “sure”. Shulman noted that in his opinion, some fit into the Act 304 scheme and others were more questionable. Trebing asked if he wanted to vote proposal by proposal. Shulman responded affirmatively.

Isaac asked Moody from the AG office to respond to some of the concerns raised by Rose and then he had a question for Droste regarding a past grant. Shulman asked Wilsey if there was anything that required the board to approve grants at that meeting. Wilsey responded that there was no statutory or administrative requirement that the grants be approved in any particular meeting. This was a practical date established based on case schedules. Moody commented that there are ways to seek additional help. He noted it took a couple of years to gain approval for the current contract support. Perhaps with the audit, additional funds could be sought. He did not think they used the full 5% that they are permitted to use under the statute for administrative expense. It is probably \$50,000, or five percent of the full million. Rose asked Moody if the statement in the letter of August 20, 2007 from the Office of Financial Management regarding additional resource needs is the vehicle for obtaining additional resources needed to carry out the board’s mission.

Droste explained that the process for requesting additional money for the fiscal year ’09 budget, because the fiscal ’08 appropriation would be passed, is to submit a request to Alan Pohl, who would then on behalf of DLEG make that recommendation with the fiscal year ’09 appropriation request. Moody asked if it was possible to do supplementals to address these concerns. Droste said if there was an immediate need for fiscal year ’08, the letter could also include a request for additional authorization to be added in fiscal year ’08. That would go through a supplemental process, which the State Budget Office would have to approve and then would have to submit on behalf of DLEG to the legislature, who then would take a vote on the supplemental process.

Rose inquired about asking the Auditor General to do an expedited review of the applications. Droste responded that in her experience, the Auditor General does not offer expertise prior to their role as to audit past practices. Droste noted that the request could be made, perhaps to ask them to read each of the proposal and give their opinion. If you have a question as to whether or not there is something in a proposal that meets Act 304, they may look at that particular question. Reviewing an entire proposal or all of the proposals is not something they would normally do in their course of business. Rose suggested in the future, the board adopt a policy that all applications are forwarded to the Auditor General for review with regard to compliance with Act 304, and that the board seek from Mr. Emerson the necessary resources to allow the board to get sufficient expert opinion.

Shulman asked if the Attorney General would be able to provide review in determining whether these cases fall within the purview of Act 304. Moody responded that he didn’t think it would be outside of their ability. Wilsey noted that it was her expectation that the AG would participate in review but she discovered in this grant cycle that it had not been past practice. Moody further commented on the question of timing for making grants. He concurred that there is no requirement however, the contracts cannot be retroactive. The need to make grants is more pressing for cases that are the most immediate.

Isaac noted that the grant proposals are submitted to her department. He asked if her department reviews the proposals to assure they meet the relevant criteria prior to being submitted to the board? Droste responded, “no.” She explained that when the ITB is issued for grant proposals, the guidelines are included. When proposals come in, they are circulated to the board members reviewing the grant proposals. It is the responsibility of the recipients of all grant proposals to determine whether the grant proposals are in compliance with the requirements set out in the ITB. Isaac affirmed that the board decision on the grant proposals is the final decision that stands open for criticism. Droste concurred.

Isaac asked Moody if he thought it was the duty of the office of Attorney General to review the grants before reaching the board or to provide guidance after the board makes a decision as to whether it acted appropriately. Moody said historically this was not their role. Last year, they did review the statute and revised the application materials to provide a set of questions that could help the board determine whether the proposal was within the statute. Perhaps these could be expanded. Isaac asked if Moody could respond to the request for review presented by Mr. Rose. Moody indicated they could provide a legal opinion on the grants. Isaac noted that there should be an understanding in writing of exactly what

the board anticipates in the future and how it addresses the concerns of the auditor. Moody suggested the board might require additional information but the existing summary includes what they need to answer the legal questions. Isaac asked Rose if this was acceptable. Rose reiterated that he wants analysis of the workload, personnel, rates, etc. Moody said the AG could not do that.

Isaac noted that additional staffing resources would have to be investigated but the legal concerns were particularly pressing. Rose said he is looking for a document – executive summary – with a recommendation at the end that says, “I have reviewed this grant proposal and it conforms with all statutory requirements, meets all policies of the board, DLEG, internal operating procedures, etc.” It should answer the following questions: 1) Do you have the authority to enter into the agreement; 2) Does the agreement comply with the extent of your authority under the enabling legislation; and 3) how are the dollars being spent? Rose emphasized this is not a negative reflection of the recipients of these grants. They are caught in the same Gordian Knot as he feels the board has been placed in by the Auditor General’s report. Rose wants to make sure, because between the lines the report implicated that the board “screwed up”, that review is done correctly beginning with this grant cycle. He suggested that the minutes be forwarded to the Auditor General for their review and/or comment and suggestions as to how they can help the board better comply with its duty to the public, as well as grantees. He is not familiar with a board in the State of Michigan that is required to dispense and oversee money that has as little support as this one. He described his experience with support of other boards and commissions.

Shulman raised his concern the additional delay by the board might imply to some parties that there isn’t much relevance to these grants. He agrees with Ron’s assessment of the need for further information, but raises the question of whether it can be obtained in a reasonable amount of time. He believes this is a very relevant board for consumers and does not want to signal to the utilities or legislators that this is unworkable. Trebing concurred. He noted that while the discussion has focused on process, he also had some substantive questions to raise with regard to each of the proposals. He asked if would be feasible to send those in writing. Applicants agreed to receive and respond to the questions. Trebing encouraged Shultz to contact the Commodity Futures Trading Commission and consider whether it is relevant to Michigan utilities. He also will forward the Midwest Attorney General’s report.

Nelson commented that he did not want to miss an intervention deadline because they were not receiving funding. The utilities will file their cases like clock work. The Commission in the order on the Edison PSCR plan last year said that they directed the parties to consider the MISO issues, particularly with their reserve margins. It is a big cost to ratepayers. If they are not in fighting with the Attorney General, they could lose that issue. Recent experience with disallowances in a Wisconsin Electric Case related to the MISO market emphasize the potential importance of examining these issues with Edison and Consumers.

Droste discussed the circulation of questions to grantees.

Keskey raised his request for time extension and amending his grant 07-02.

Isaac requested that the question be resolved as to whether Moody thought in a couple of weeks he could provide the review suggested by Messrs. Rose and Shulman? Moody responded that he thought they could answer the legal questions as to whether grant applications satisfy requirements in the statute. Isaac asked for his recommendation on how to get the administrative analysis. Moody suggested that they survey the grant applicants for comparison. Rose noted that DLEG should have records as to what has been paid in the past. He thought that DLEG or someone with the department would be able to dig that information out. He noted there were some experts participating in more than one application. He expects the department would catch this and let me know if there is any problem with that. Trebing requested comment on the Keskey request.

Shulman offered the comment that he had some issues with regard to the amendment request because it is energy efficiency that may not fall under Act 304. He had to leave for a court hearing, and deferred to his colleagues to make a decision. Wilsey asked what action the board was taking on the 2008 grant applications. Rose moved, second by Trebing and motion carried to table the 2008 grant application review/approval to a special meeting scheduled September 24, 2007.

Rose recognized former Commissioner Robert Nelson as one of the prospective UCRF grantees.

The board discussed the grant extension/amendment request by Keskey. Isaac moved, second by Trebing and motion carried to table item c, the amendment request to the September 24, 2007 meeting. Keskey asked if the intent of the motion was to have him pursue an administrative approval of a time extension from DLEG. Wilsey said he could pursue administrative approval. Isaac indicated that he preserved his ability to appeal should his request be denied. Keskey noted that that would be beyond September 15. Rose commented that he felt he had preserved the issues as he filed the request prior to the 15th. Liskey requested that he and Moody receive copies of any grant extension or amendment requests. Keskey requested copies of the Governor's Order. Moody noted that it was on the web site.

Isaac suggested that in the future board packets contain the current documents, opinions from DLEG and AG, and the board assistant's recommendations. Isaac noted that a cut-off would be required to implement this process. He also commented that he was not particularly concerned with the details of the individual rates/budget. He suggested that it was up to the grantee to reevaluate the budget based on whatever total amount the board granted.

Trebing commented that once the review conditions are satisfied, the discussion can proceed to the substantive issues. Rose agreed that that is his main concern. He feels the board was appointed to decide on public policy and public interest issues, not on administrative matters. Isaac agreed that most of the homework is done between the meetings and the public meeting is the forum where decisions are efficiently made.

Rose moved, second by Isaac and motion carried to go into executive session with the three remaining board members and administrative assistant immediately following adjournment of the regular meeting. Moody counseled that they not rule on any of the grants. Rose indicated that the executive session was not for the purpose of making or discussing any of the matters to be decided on by the board.

VII. Next Meeting

The next meeting is scheduled September 24, 2007, 10:00 a.m., Ottawa Building, 4th Floor Training Room

VIII. Adjournment

Chairman Trebing adjourned the meeting at 1:10 p.m.

Note: Full transcripts of this meeting are available upon request.